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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-5951

JAMES WILLARD SUMMITT — PETITIONER

V.

DONALD E. BORDENKIRCHER, WARDEN — RESPONDENT

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

The respondent, by counsel, respectfully requests this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion in this case. That opinion is reported at 608 F.2d 247.

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

DOES CONSTITUTIONAL DUE PROCESS OF LAW REQUIRE A STATE TRIAL COURT TO DETERMINE THE RELIABILITY OF IDENTIFICATION EVIDENCE IN AN IN CAMERA HEARING?

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct. Additional material facts and corrections, if necessary, will be set out in the arguments which follow.

REASON WHY THE WRIT SHOULD BE DENIED

THE ALLEGEDLY CONFLICTING DECISIONS ARE DISTINGUISHABLE ON THE LAW.

The petitioner asks that his petition be granted because of an alleged conflict between the various circuit courts of appeal. The case of United States v. Driber, 546 F.2d 18 (3rd Cir. 1976) and the authority relied on therein was based on the supervisory power and not on the requirements of due process. There is no conflict between the circuit courts of appeal nor can petitioner show an actual conflict.

The court below considered and relied on the decisions in Simmons v. United States, 390 U.S. 377 (1968), Neil v. Biggers, 409 U.S. 188 (1972), and Manson v. Brathwaite, 432 U.S. 98 (1977). Petitioner has not shown that the decision below is contrary to the Court's position in these cases.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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